

**Michigan Senate Insurance Committee Hearings
May 22, 2012 at 2:30 pm
Room 100 Farnum Building,
123 W. Allegan Street, Lansing MI 48933**

SB 1117. Expert Testimony Required with Nonlicensed Personnel

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This bill will unnecessarily increase litigation costs for all parties

In a medical malpractice case, experts are required to explain to the jury the standard of care when the actions of a physician or nurse are not based on common knowledge. Experts are required when the actions of a physician or nurse are based on medicine, science, specialized education and training. When an expert is required, all parties – plaintiff and defendant – must spend a significant amount of money hiring experts to review records, sign affidavits and give testimony. Jurors must listen to testimony from these experts to gain an understanding of the medical issues involved in the care.

SB 1117 states that in medical malpractice cases, an unlicensed individual is now an expert witness. Some examples of unlicensed individuals are nursing assistants who bathe, feed and toilet patients, unit secretaries who take written orders and put them into a computer, or dietary staff who deliver trays of food to patients. These unlicensed individuals are not required to have a high school diploma, yet they are elevated to the level of a "specialist" by this bill. And our jurors are going to have to sit through testimony from a witness explaining how a person takes a bath, goes to the bathroom, or delivers a tray of food. Certainly, lay people are familiar with these tasks. If passed, SB 1117 will be nothing more than an unnecessary waste of time and money for parties, the court, and jurors.

This bill will burden the courts

This bill will create the need for a "lawsuit before the lawsuit." Michigan law requires a plaintiff in a medical malpractice lawsuit to obtain an Affidavit of Merit from someone in the same profession as the negligent individual before the medical malpractice lawsuit can ever be filed. Likewise, a defendant must obtain an Affidavit of Meritorious

Defense after the complaint is filed. The name and job title of the negligent person, however, may not be ascertainable from the records because unlicensed individuals usually do not make notes or even sign their names in medical records. As a result, plaintiffs will need to file a separate lawsuit before the medical malpractice lawsuit is filed, solely to find out the identity and / or job title of the negligent individual. Only after the plaintiff knows who was involved can the plaintiff obtain an Affidavit of Merit from the appropriate unlicensed individual. Obviously, an "extra" lawsuit will not only increase litigation costs, but it will significantly burden the court system.

This bill will hurt the most vulnerable patients

In reality, the most vulnerable patients in our society - the elderly - will be most affected by this bill. The elderly who live in nursing homes and other care facilities are treated in large part by unlicensed individuals. This bill would make it harder and more expensive for victims of nursing home abuse and neglect to seek justice when a resident of a nursing home is allowed to wander out into the winter cold and freeze to death because the home is understaffed; when an unlicensed sitter falls asleep on the job and a resident falls and breaks a hip; when an unlicensed aide delivers a full tray of regular food to a resident on a mechanical soft diet, and the resident chokes and dies. Before voting on this bill, I ask you to ask yourselves if making the system harder for vulnerable, neglected and abused nursing home residents is what you want to do today.